Assessment Year 1989-90

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 75 of 2001
(Old No. 362/2000)

The Commissioner of Income Tax,
Meerut and another …… Appellants

Versus

M/s Hughes Services (FE) PTE Ltd.,
As agent of Mr. Manes E.H. Dehradun …… Respondent

Mr. S.K. Posti, learned, Advocate for appellants.
Ms. V.K. Bist, learned senior counsel for the respondent.

Date: 09.07.2004

Hon'ble Rajesh Tandon, J.
Hon'ble P.C. Pant, J.

1. This is an appeal under section 260A of the Income Tax Act, 1961 filed by the Revenue against the judgment and order dated 24-1-2000 passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. No. 428/D/1993.

2. Mr. Manes E.H. Dehradun, respondent is a non-resident foreign technician employed by a foreign company.

3. The questions raised before us are as follows:-

QUESTIONS:

1. Whether on the facts and in the circumstances of the case, the Ld. ITAT was legally justified in holding that free boarding and lodging facilities provided by the employer on board and rig in high seas cannot be construed to be perquisite?
2. Whether on the facts and circumstances of the case, the Ld. ITAT was legally justified in holding that interest u/s 234-B

of the IT Act cannot be charged since the entire income of the assessee was subject to TDS whereas this interest is chargeable on assessed tax as defined by Explanation I below Section 234-B?

4. Heard learned counsel for the parties and perused the record.

5. The case is squarely covered by the judgment in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd., the reasoning regarding question No. 1 is given as under:

In this case, assessee had to work on the rig. It was hazardous, arduous and continuous. Under such circumstances free food and beverages is a necessity. It is not a luxury. It is not a perquisite. Its value cannot be added to the income of the assessee.

6. The reasoning regarding question No. 2 is as under:

It is important to note that section 234B imposes interest, which is compensatory in nature and not as a penalty (See Union Home Products Vs Union of India reported in 215- ITR-758 at page 766). Secondly, although section 191 of the Act is not over-ridden by sections 192, 208 & 209(1)(a)(d) of the Act, the scheme of sections 208 & 209 of the Act indicates that in order to compute advance tax the assessee has to interalia estimate his current income and calculate the tax on such income by applying the rates in force. That u/s 209(1)(d) the income-tax calculated is to be reduced by the amount of tax which would be deductible at source or collectible at source, which in this case has not been done by the employer company according to the law prevailing for which the assessee cannot be faulted. As stated above at the relevant time there were conflicting

decisions of the Tribunal. A bonafide dispute was pending. The assessee had to estimate his current income. The words used u/s 209(1)(a) makes the Assessee estimate his current income and since a bonafide dispute was pending, imposition of interest u/s 234B was not justified without hearing and without reasons. Accordingly, we answer this question in the affirmative i.e. in favour of the assessee and against the department.

7. For the reasons aforesaid, we answer both the two question in the affirmative i.e. in favour of the assessee and against the department.

8. Appeal disposed of accordingly. No order as to costs.

(P.C. Pant, J.) **(Rajesh Tandon, J.)**

Dt. 9-7-2004
M.K.